

MAR 25 2009

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

Pre-MUR: 472
DATE RECEIVED: May 27, 2008
LAST RESPONSE RECEIVED: May 30, 2008
DATE ACTIVATED: June 4, 2008
EXPIRATION OF SOL: April 17, 2013/May 23, 2013

SOURCE: The Alliance for Climate Protection

RESPONDENT: The Alliance for Climate Protection

RELEVANT STATUTES: 2 U.S.C. § 441a
2 U.S.C. § 441b(a)
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

MUR: 6020
DATE COMPLAINT FILED: May 30, 2008
DATE OF NOTIFICATION: June 5, 2008
LAST RESPONSE RECEIVED: July 25, 2008
DATE ACTIVATED: June 30, 2008
EXPIRATION OF SOL: April 17, 2013/May 23, 2013

COMPLAINANT: Judicial Watch

RESPONDENTS: The Alliance for Climate Protection
Nancy Pelosi for Congress and Paul Pelosi,
in his official capacity as treasurer
Representative Nancy Pelosi

RELEVANT STATUTES: 2 U.S.C. § 434(b)
2 U.S.C. § 441a

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2 U.S.C. § 441b(a)
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns broadcast and print communications paid for by the Alliance for Climate Protection (the "Alliance") that featured Speaker of the House of Representatives Nancy Pelosi and were distributed and disseminated within 90 days of the California Congressional primary election on June 3, 2008, in which Speaker Pelosi was a candidate. The Alliance

_____ to disclose possible coordinated communications with Speaker Pelosi and Nancy Pelosi for Congress, and Paul Pelosi in his official capacity as treasurer (the "Committee"), on May 27, 2008. Three days later, Judicial Watch filed a complaint alleging that the same communications were coordinated and may have resulted in a prohibited corporate and an excessive contribution by the Alliance to Speaker Pelosi and the Committee, as well as reporting violations by both the Alliance and the Committee.

The Alliance _____ states that it is a section 501(c)(3) organization. According to the Alliance, it hired an advertising agency to produce and nationally disseminate television and print advertisements featuring Speaker Pelosi and former Speaker of the House Newt Gingrich as part of its "'We Campaign' to raise awareness of climate issues," educate the public "on the urgent need to solve the climate crisis and to demand real solutions from leaders in business and government." _____ at 1-2.

As discussed in more detail below, because it appears that the Alliance's communications were coordinated with Speaker Pelosi and the Committee within the meaning of 11 C.F.R. § 109.21, we recommend that the Commission find reason to believe that the Alliance made, and Speaker Pelosi and the Committee accepted, a prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a), and that the Committee failed to report the in-kind corporate contribution in violation of 2 U.S.C. § 434b,

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The Alliance is a domestic non-profit corporation registered in the District of Columbia. According to _____ in 2007, the Alliance hired the Martin Agency, an advertising agency, to produce a series of advertisements featuring "unlikely pairs" of individuals appearing together "to talk about climate change and the need for action" for Alliance's "We Campaign." At 2. One of the several "unlikely pairs" considered for an advertisement included Speaker Pelosi and former Speaker Gingrich, who agreed to appear together "to demonstrate their mutual interest in and support of the goals of the We Campaign." *Id.* at 6. Former Vice President Al Gore, founder and Chairman of the Board of the Alliance, contacted Speaker Pelosi and former Speaker Gingrich by telephone about possibly appearing in the proposed advertising campaign on February 11, 2008, and Speaker Pelosi agreed to participate at that time. *Id.* at 7; Conference with Alliance counsel, Oct. 9, 2008. One other "unlikely pair" who agreed and was selected to participate in this particular advertising campaign was Reverend Pat Robertson and Reverend Al Sharpton. *Id.* at 2. The Alliance and the Martin Agency also developed and produced other advertisements for the "We Campaign" during this time period.

1 According to the Alliance, when Speaker Pelosi agreed to appear in the advertisements,
2 no decisions had been made as to when to run any of the "We Campaign" advertisements,
3 including the Pelosi/Gingrich television and print advertisements. *Id.* at 6. Documents provided
4 by the Alliance show that the Martin Agency, acting as an agent of the Alliance, made media
5 buys for both national print media and national network and cable television in February 2008
6 before any "unlikely pairs" scripts were written or advertisements produced; the print media buys
7 were made before Speaker Pelosi had been asked to participate in the "We Campaign." *Id.* at 3.

8 The television buys were for blocks of time and the print media buys were for space
9 rather than for specific advertisements because final, and in some cases even preliminary,
10 decisions on the specific "unlikely pairs" advertisements had not yet been made. *Id.* at 2-3. The
11 Alliance states _____ and documents provided by the Alliance show, that
12 it purchased only national airtime and "did not target the communications to specific states or
13 markets." *Id.* at 6. _____ "[t]he Alliance was responsible for all
14 decisions regarding the production, cost and placement of the ad," as well as all media buys,
15 although its counsel later clarified that the Alliance also delegated authority to the Martin
16 Agency, which "drove the logistics" of and made the decisions regarding actual "ad placement
17 and sequence" within the time slots and spaces already purchased. *Id.* at 6; Conference with
18 Alliance counsel, Sept. 16, 2008. *Id.*

19 The Alliance states that after its initial contact with Speaker Pelosi by former Vice
20 President Gore, it and the Martin Agency communicated with Speaker Pelosi's House Leadership
21 Office, where Drew Hammill was the primary contact, and did not communicate with her district

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1 or political staff.¹ *Id.* at 9. The Alliance further states that there was no discussion or
2 consideration of politics, Speaker Pelosi's candidacy or the primary election, and that the
3 communications with Speaker Pelosi's "Leadership [O]ffice focused solely on the timing of the
4 ad, coordination with [former] Speaker Gingrich's schedule, the content of the script, and other
5 logistical details." _____] at 6. Between February 26 and March 17, 2004, there
6 were a number of email and telephonic communications between Hammill and Carol Gordon, a
7 Martin Agency employee, primarily concerning scheduling, although an email dated February 27,
8 2008 from the Martin Agency to Hammill attached an initial script. After the Martin Agency
9 sent scripts to Speaker Pelosi and former Speaker Gingrich on March 24, 2008, Speaker Pelosi's
10 House Leadership Office staff suggested revisions to include "more substance about the issue"
11 that were discussed with the Alliance on March 31, 2008. *Id.* at 7. Hammill stated in an email to
12 Gordon on March 31, 2008, that Speaker Pelosi "liked the first script we were shown," but that
13 he anticipated there were some things she would want to change. These changes were included
14 in the script on April 1, 2008.² *Id.* The Martin Agency forwarded the final scripts to Speaker
15 Pelosi and former Speaker Gingrich, and they were approved on April 2, 2008.

16 The final script for the television advertisement, which was filmed on April 3, 2008, is as
17 follows:

18 [Pelosi]: Hi, I'm Nancy Pelosi, lifelong Democrat and
19 Speaker of the House.

20 [Gingrich]: And, I'm Newt Gingrich, lifelong Republican and I
21 used to be Speaker.

¹ Hammill is listed in the Congressional Telephone Book as an employee of the House Leadership Office, but he has also been referred to as Speaker Pelosi's "spokesman" in several news articles regarding election matters. See, e.g., Cindy Sheehan Qualifies to Challenge Pelosi, *The Washington Post*, Aug. 11, 2008, at A5, available at <http://www.washingtonpost.com/>.

² The Alliance has been unable to locate all of the drafts of the scripts showing these revisions or provide detailed information as to the content of the revisions.

1 [Pelosi]: We don't always see eye-to-eye, do we, Newt?

2 [Gingrich]: No, but we do agree that our country must take
3 action to address climate change.

4 [Pelosi]: We need cleaner forms of energy and we need them
5 fast.

6 [Gingrich]: If enough of us demand action from our leaders, we
7 can spark the innovation we need.

8 [Pelosi]: Go to wecansolveit.org. Together, we can do this.

9
10 The print advertisement featured a photograph of Speaker Pelosi and former Speaker

11 Gingrich sitting together on a small couch in front of the United States Capitol. *See Attachment*

12 1. Speaker Pelosi is identified under the photograph as "Speaker Nancy Pelosi (D)."

13 According to the Alliance, other "We Campaign" television advertisements, which were
14 produced and "in the can" before the Pelosi/Gingrich advertisement, began running on television
15 in early and mid-April. *Id.* at 5; Conference with Alliance counsel, Sept. 16, 2008. The
16 Pelosi/Gingrich advertisement was "rotated in" and broadcast beginning on April 17, 2008, and
17 was run at the same time as the Sharpton/Robertson advertisement. _____ at 8;

18 Conference with Alliance counsel, Sept. 16, 2008. The Alliance states, and email
19 communications provided by the Alliance appear to confirm, that Speaker Pelosi's Leadership
20 office was informed that the Pelosi/Gingrich television advertisement would begin running two
21 days before it was first broadcast, 47 days before the primary election in her district. Conference
22 with Alliance counsel, Sept. 16, 2008.

23 The Pelosi/Gingrich television advertisement originally ran from April 17 through
24 April 30, 2008, which was within 90 days of the June 3, 2008, primary election. According to
25 the Alliance, it decided to run the advertisement again on May 6, 2008 on a number of national
26 networks because it was a "big night" for the Democratic primaries. *Id.* The Alliance hoped the
27 advertisement would catch the attention of "political junkies" of both parties watching the

1 returns, and would draw people watching the returns to the "We Campaign." *Id.* The Alliance
2 claims, however, that there was no consideration that the advertisement might draw people
3 watching the returns in Speaker Pelosi's district to vote for her. *Id.* The Alliance states that
4 neither Speaker Pelosi nor the Committee received advance notice about this additional media
5 buy. Conference with Alliance counsel, Oct. 9, 2008.

6 The Alliance admits to paying for the media buys and production costs of the television
7 advertisement. _____ at 2-3. Documents provided by the Alliance disclose that
8 the Pelosi/Gingrich advertisements ultimately constituted 12.7% of the aggregated cost of the
9 television advertisements and 6.4% of the aggregated cost of the print media advertisements in
10 comparison to the other advertisements for this phase of the "We Campaign." representing 9.6%
11 of the total amount spent on television and print advertisements. These percentages translate to
12 \$888,544 spent on television advertisement production and airtime buys and \$251,352 spent on
13 print production and media buys, for a total cost for the Pelosi/Gingrich advertisements of
14 \$1,139,896.

15 Since the television advertisement was carried nationally, its broadcast area included
16 Speaker Pelosi's Congressional district in California where it was broadcast within 90 days of the
17 June 3, 2008 California Congressional primary election in which she was a candidate. Print
18 versions of the advertisement ran in national magazines, including *People*, *Scientific American*,
19 *The New Yorker*, *The Economist* and *Rolling Stone*, whose distribution areas included Speaker
20 Pelosi's Congressional district, between May 5 and May 23, 2008, which was also within 90 days
21 of the primary election.

22 The Alliance _____ states that any violations resulting from these facts
23 were inadvertent and requests conciliation. The Alliance's response to the Judicial Watch

1 complaint reiterates its request for conciliation and asks _____

2 _____

3 In their joint response to the complaint, Speaker Pelosi and the Committee state they
4 "understood that the Alliance would comply with all laws and regulations that might affect the
5 content or placement of the ad." At 2. Their response further states that the advertisements were
6 "distributed nationally without targeting the Speaker's district" and that the advertisements
7 "placed her next to a famous Republican who was an anathema to her Democratic primary
8 voters." *Id.* The response further states that neither Pelosi nor the Committee requested or
9 suggested the advertisement or "assented to its distribution in the [8th] District," and that there
10 was "no discussion of campaign plans, projects, activities or needs." *Id.* at 3.

11 **B. Legal Analysis**

12 **1. Coordinated Communications**

13 The television and print media advertisements constitute coordinated communications
14 because they meet the requirements set forth in the regulations discussed below and, as such, are
15 in-kind contributions from the Alliance to Speaker Pelosi and the Committee.³ 11 C.F.R.
16 § 109.21. An in-kind contribution includes an expenditure made by any person "in cooperation,
17 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized
18 political committees, or their agents," and in-kind contributions are subject to the same

³ The U.S. District Court for the District of Columbia held that the Commission's revisions of the content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not enjoin the Commission from enforcing the regulations. *See Shays v. F.E.C.*, 508 F. Supp. 2d 10 (D.D.C. Sept. 12, 2007) (granting in part and denying in part the respective parties' motions for summary judgment). The D.C. Circuit affirmed the district court with respect to, *inter alia*, the current standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. *See Shays v. F.E.C.*, No. 07-5360, 2008 WL 2388661 (D.C. Cir. June 13, 2008).

1 restrictions and reporting requirements as other contributions. 2 U.S.C. § 441a(a)(7)(A), (B)(i);
2 11 C.F.R. §§ 100.52(d)(1), 109.21(b).

3 The criteria for a coordinated communication consist of three prongs – payment by
4 someone other than the candidate, her committee or political party committee; satisfaction of one
5 or more content standards; and satisfaction of one or more conduct standards. 11 C.F.R.

6 § 109.21. The advertisements at issue meet all three prongs:

7 a) Payment Prong – A coordinated communication must be paid for in
8 whole or part by someone other than the candidate, her authorized committee or political party
9 committee. 11 C.F.R. § 109.21(a)(1). The Alliance admits to paying for the production and
10 placement of the advertisements, and therefore the payment prong is satisfied.

11 b) Content Prong – One way in which the content prong may be satisfied
12 is through a public communication, as defined in 2 U.S.C. § 431(22) and 11 C.F.R. § 100.26,
13 which “refers to a clearly identified House or Senate candidate that is publicly distributed or
14 otherwise publicly disseminated in the clearly identified candidate’s jurisdiction 90 days or fewer
15 before the . . . primary or preference election.” 11 C.F.R. § 109.21(c)(4)(i). “Clearly identified”
16 means the candidate’s name or photograph appears, or “the identity of the candidate is otherwise
17 apparent through an unambiguous reference.” 2 U.S.C. § 431(18); 11 C.F.R. § 100.17. The
18 television and print advertisements, which meet the definition of a public communication
19 because they consisted of “a communication by means of any broadcast, cable, satellite
20 communication, newspaper, [or] magazine . . . to the general public,” clearly identify Speaker
21 Pelosi, at the time a candidate in the Democratic primary election for California’s 8th
22 Congressional District held on June 3, 2008, because they feature her name and image. 2 U.S.C.

1 § 431(22); 11 C.F.R. § 100.26. The nationally run advertisements aired in Speaker Pelosi's
2 district within 90 days of the primary. Thus, the content prong is satisfied.

3 This conclusion is consistent with Advisory Opinion 2006-10 (Echostar), in which the
4 Commission considered whether Echostar's proposed public service announcements ("PSAs")
5 featuring members of Congress delivering messages that promoted, and solicited donations to,
6 charitable causes would constitute coordinated communications. Echostar represented that the
7 PSAs would not promote, support, attack, or oppose the soliciting candidate or another candidate
8 seeking election to the same office, and would not run during the "electioneering
9 communication" time-period.

10 The Commission concluded that Echostar's proposed PSAs would qualify for the
11 charitable solicitation exception to coordinated communications in 11 C.F.R. §109.21(g),
12 provided the organizations for which the funds were solicited were described in 26 U.S.C.
13 § 501(c), and met certain other provisos. The Commission also noted that any proposed PSAs
14 distributed more than 90 days before the featured candidates' elections or not distributed in their
15 jurisdictions, would not be coordinated communications because they would not satisfy the
16 content prong of the coordinated communications test. The Commission then stated: "[i]f the
17 proposed PSAs, however, will be publicly distributed in the featured candidates' jurisdictions
18 within 90 days of the featured candidates' elections and the PSAs do not solicit funds for section
19 501(c) organizations, then they would constitute coordinated communications." AO 2006-10 at
20 4. Here, the Alliance's communications featuring Speaker Pelosi ran in her district within 90

1 days of her 2008 California primary election, and did not solicit funds for section 501(c)
2 organizations.⁴ Therefore, Alliance's communications met the content prong.

3 c) Conduct Prong – The conduct prong is satisfied if a candidate or
4 candidate's committee assents to a request or suggestion that the public communication be
5 created, produced or distributed, and that request or suggestion came from the person paying for
6 the communication. 11 C.F.R. § 109.21(d)(1)(ii). The Commission, citing to *Buckley v. Valeo*,
7 424 U.S. 1 (1976) and the Senate Reports accompanying the 1974 amendments to the Federal
8 Election Campaign Act of 1971, as amended, has stated “[a] request or suggestion encompasses
9 the most direct form of coordination” and requires a fact-based analysis. Explanation and
10 Justification for Coordinated and Indep. Expenditures (“E&J”), 68 Fed. Reg. 421, 432 (Jan. 3,
11 2003).

12 Speaker Pelosi assented to the creation and production of the advertisements, and
13 assented to their distribution. Because Speaker Pelosi is an agent of the Committee, her actions
14 are also imputed to the Committee. 11 C.F.R. §§109.3(b)(1), (2); 109.21(a), (d)(1)(ii). The
15 Alliance [redacted] states that Al Gore, in his capacity as Chairman of the
16 Alliance, “telephone[d] Speaker Pelosi and [former] Speaker Gingrich to invite them to
17 participate in the We Campaign advertisement,” and Speaker Pelosi “agreed to appear in [her]
18 official capacit[y].” At 3, 4. The Alliance also produced an email dated February 27, 2008 from
19 a Martin Agency representative Gordon to Drew Hammill, the contact for Speaker Pelosi,
20 confirming that Speaker Pelosi “agreed to participate in [the advertisements] via her conversation
21 with Al Gore earlier this month.” In their joint response, Speaker Pelosi and the Committee state

⁴ In another advisory opinion, AO 2006-29 (Bono), the Commission determined that a member of Congress could appear in an infomercial promoting an area's tourism because it would not be broadcast in her Congressional district and did not meet any other content standards set forth in 11 C.F.R. § 109.21(c).

1 "she agreed to appear . . . in a national television advertisement sponsored by the Alliance"

2 At 2.

3 When she assented to appear in the Alliance's advertisements at its request, Speaker
4 Pelosi knew that advertisements featuring her would be created, produced and distributed
5 nationwide. Speaker Pelosi assented to the creation and production of the advertisements by
6 physically appearing for the film and photo shoot and being filmed while speaking her lines from
7 the script. She also assented to the distribution of the advertisements because there was no
8 reason for them to have been created and produced if they were not going to be distributed, and
9 the joint response states that the advertisements were to be distributed nationwide. Although
10 there is no evidence that Pelosi or the Committee specifically assented to the distribution of the
11 advertisements in her district, the respondents presented no evidence that either Speaker Pelosi or
12 her agents attempted to restrict them from running there.

13 Alternatively, the conduct prong may also be satisfied through Speaker Pelosi and her
14 agent Drew Hammill's material involvement in the advertisements, including in decisions
15 regarding the content of a communication.⁵ 11 C.F.R. § 109.21(d)(2). While we do not know the
16 full extent of her involvement, it is evident that Speaker Pelosi had input into and approval
17 authority over the script. The _____ timeline reflects that Speaker Pelosi and
18 her agents were shown and made changes to the scripts between March 24 and April 2, 2008, and
19 the Alliance admits that communications with her staff included discussions concerning "the
20 content of the script." At 6-7; 11 C.F.R. §§ 109.3(b)(4)(i); 109.21(d)(2)(i). In an email from

⁵ Hammill was an agent of Speaker Pelosi, as he had authority "[t]o be materially involved in decisions regarding the content of the [Pelosi/Gingrich television advertisement]" and made decisions regarding changes to the content of the script. 11 C.F.R. § 109.3(b)(4)(i); see, e.g., email from Hammill to Hardwick, April 2, 2008 ("She will not want Newt calling her 'Nancy' in the ad though, so I am removing that from what I show her.").

Hammill to Gordon, also dated March 31, 2008 and provided by the Alliance, shows Speaker Pelosi had received one of the draft scripts by then and "liked the first script we were shown" and she apparently approved the content of the television advertisement by following the script while being filmed on April 3, 2008. In another email from Hammill to Brian Hardwick at the Alliance, dated March 31, 2008, concerning calls from the press prior to the filming of the television advertisement, Hammill asks, "Could you give me some guidance on what you'd like [Speaker Pelosi] to say generally about the [We] campaign and her participation?" Finally, another email from Hammill to Gordon dated April 3, 2008, states that "the Speaker was pleased" following the filming of the television advertisement.

The Commission has determined that a federal candidate's appearance in a communication constitutes material involvement in the content of the communication and satisfies the conduct prong, particularly in matters where, as in this case, the candidate or her agent has the authority to review or approve the script. 11 C.F.R. § 109.21(d)(2)(i); E&J, 68 Fed. Reg. at 434; AO 2003-25 (Weinzapfel) ("[I]t is highly improbable that a Federal candidate would appear in a communication without being materially involved in one or more of the listed decisions regarding the communication."); AO 2004-1 (Forgy Kerr). That determination would also apply here due to Speaker Pelosi's appearance in the television advertisement and in the print advertisement by being photographed specifically for the advertisement, and because documents provided by the Alliance show that she or an agent acting on her behalf made decisions regarding the content of advertisements through changes to and approval of the script for the television advertisement. 11 C.F.R. § 109.21(d)(2)(i). Therefore, the conduct prong is satisfied through both Speaker Pelosi's assent to the request or suggestion that the advertisements

be created, produced or distributed, and the material involvement of Speaker Pelosi and her agents in the content of the communications.⁶

2. Corporate Contribution

The Alliance is prohibited from making contributions of any amount to a federal candidate or authorized committee because it is a corporation, and for this reason federal candidates and their committees are prohibited from accepting or receiving contributions, including in-kind contributions, from the Alliance. 2 U.S.C. §§ 431(8)(A)(i); 441b(a), 11 C.F.R. §§ 100.52(a), (d)(1); 114.2(b)(1). Speaker Pelosi is an agent of her authorized committee and any contribution she accepts or receives is imputed to her committee. 2 U.S.C. § 432(e)(2); 11 C.F.R. §§ 101.2(a); 102.7(d). Further, if a candidate assents to a request or suggestion concerning the creation, production or distribution of a coordinated communication, or is materially involved in decisions regarding the content of a coordinated communication, resulting in an in-kind contribution, then both the candidate and her committee receive or accept the in-kind contribution. 2 U.S.C. § 432(e)(2); 11 C.F.R. §§ 101.2(a); 102.7(d); 109.21(b)(2).

Since the television and print advertisements featuring Speaker Pelosi and paid for by the Alliance are coordinated communications and constitute an in-kind contribution from the Alliance to Speaker Pelosi's re-election campaign, we recommend the Commission find reason to believe that the Alliance for Climate Protection made a prohibited in-kind corporate

⁶ The joint response states, "Faced before with ads lacking an election-influencing purpose, where third-parties made content and placement decisions, the Commission has exercised its discretion and taken no action. See, e.g., MUR 5718 (Rep. Jesse Jackson, Jr.)." However, MUR 5718 involved an endorsement of a state candidate by a federal candidate, and the Commission exercised its prosecutorial discretion because it had created a "safe harbor" in the coordinated communications regulation for such endorsements, and the advertisements at issue would have fallen under this "safe harbor" had it been in effect before the advertisements had been paid for and aired. First General Counsel's Report, at 6-7; 11 C.F.R. § 109.21(g). The Commission created this safe harbor as a limited exception to the coordination regulation in order to allow for the continuation of endorsements of state candidates by federal candidates as long as the communication does not also promote, support, attack or oppose the federal candidate. Here, because the Alliance advertisements did not involve an endorsement, the safe harbor does not apply.

1 contribution resulting from coordinated communications in violation of 2 U.S.C. § 441b(a).
2 Further, since the candidate assented and was materially involved in the communications, we
3 recommend that the Commission find reason to believe that Representative Nancy Pelosi and
4 Nancy Pelosi for Congress, and Paul Pelosi in his official capacity as treasurer, accepted a
5 prohibited in-kind corporate contribution resulting from coordinated communications in violation
6 of 2 U.S.C. § 441b(a).⁷

7 **3. Reporting Violations**

8 Political committees must report an in-kind contribution from a coordinated
9 communication as both a receipt and an expenditure made by that committee. 2 U.S.C. § 434(b);
10 11 C.F.R. §§ 109.21(b)(1), (3). The complaint alleges that the Alliance and the Committee failed
11 to report the in-kind contribution. The Alliance does not qualify as a political committee and had
12 no obligation to report the coordinated in-kind contribution. The Committee did not report the
13 in-kind contribution that resulted from the coordinated communications paid for by the Alliance
14 on either its 2008 April Quarterly, 12-Day Pre-Primary or July Quarterly Reports. Therefore, we
15 recommend the Commission find reason to believe that Nancy Pelosi for Congress, and Paul
16 Pelosi in his official capacity as treasurer, failed to report an in-kind contribution resulting from
17 coordinated communications in violation of 2 U.S.C. § 434(b).

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⁷ We do not reach the issue of whether the contribution was excessive in violation of 2 U.S.C.
§ 441a(a)(1)(A), as alleged in the complaint, because 2 U.S.C. § 441b(a) prohibits corporate contributions in any
amount.

P-MUR 472/MUR 6020
First General Counsel's Report

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P-MUR 472/MUR 6020
First General Counsel's Report

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IV. RECOMMENDATIONS


1. Merge Pre-MUR 472 into MUR 6020.
2. Find reason to believe that the Alliance for Climate Protection made a prohibited in-kind corporate contribution resulting from coordinated communications in violation of 2 U.S.C. § 441b(a).
3. Find reason to believe that Representative Nancy Pelosi accepted and received a prohibited in-kind corporate contribution resulting from coordinated communications in violation of 2 U.S.C. § 441b(a).
4. Find reason to believe that Nancy Pelosi for Congress and Paul Pelosi in his official capacity as treasurer, accepted and received a prohibited in-kind corporate contribution resulting from coordinated communications in violation of 2 U.S.C. § 441b(a).
5. Find reason to believe that Nancy Pelosi for Congress and Paul Pelosi in his official capacity as treasurer, failed to report an in-kind contribution resulting from coordinated communications in violation of 2 U.S.C. § 434(b).
- 6.
7. Approve the attached Factual and Legal Analyses.

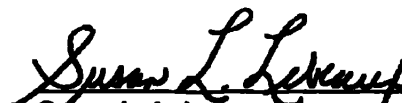
8. _____

9. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

3/26/07
Date

BY: 
Ann Marie Terzaken
Associate General Counsel
For Enforcement


Susan L. Lebeaux
Assistant General Counsel


J. Cameron Thurber
Attorney

Attachments:

1. Print advertisement featuring Speaker Pelosi